

MONTANA LEGISLATIVE HISTORY

Chapter 411 19 91

Bill H 741 S _____

Original bill & history C

1st page
only -
Bill is
178 pg.

H. Committee on Bus & Eco. Dev.

S. Committee on Judiciary

Hearing Date(s) 2-18 C

Hearing Date(s) 3-18 C

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Date Out 2-18 C

out 3-18 C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

NOTE: EXHIBITS 12 & 12A TO THE 2/18 HEARING
IN THE HOUSE BUSINESS & ECONOMIC
DEVELOPMENT COMMITTEE ARE IMPROPERLY
MARKED AS RELATED TO HB 686 =>
THEY IN FACT ARE RELATED TO HB 741.

HOUSE FINAL STATUS

HB 743

2/14 FISCAL NOTE RECEIVED
 2/14 FISCAL NOTE PRINTED
 3/07 HEARING
 3/11 TABLED IN COMMITTEE

HB 741 INTRODUCED BY CROMLEY, ET AL.
 REVISE NONPROFIT CORPORATION LAW

2/11	INTRODUCED		
2/11	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/11	FIRST READING		
2/11	FISCAL NOTE REQUESTED		
2/16	FISCAL NOTE RECEIVED		
2/18	HEARING		
2/18	FISCAL NOTE PRINTED		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	PLACED ON CONSENT CALENDAR		
2/23	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO JUDICIARY		
3/18	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCURRED	48	0
3/21	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
4/05	SIGNED BY SPEAKER		
4/05	SIGNED BY PRESIDENT		
4/08	TRANSMITTED TO GOVERNOR		
4/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 411		
		EFFECTIVE DATE: 1/01/92	

HB 742 INTRODUCED BY WANZENRIED
 REVISE BOAT DEALER LAWS

2/11	INTRODUCED		
2/11	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/11	FIRST READING		
2/11	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
3/08	HEARING		
3/09	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/12	2ND READING PASSED	96	2
3/14	3RD READING PASSED	96	3
	TRANSMITTED TO SENATE		
3/15	FIRST READING		
3/15	REFERRED TO BUSINESS & INDUSTRY		
3/20	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	48	0
3/25	3RD READING CONCURRED	46	2
	RETURNED TO HOUSE		
4/02	SIGNED BY SPEAKER		
4/02	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 375		
		EFFECTIVE DATE: 10/01/91	

HB 743 INTRODUCED BY SCOTT, ET AL.
 INSTALL FLASHING LIGHTS ON INTERSTATE
 WHERE SPEED REDUCED TO 55 MPH

1 *House* BILL NO. *741*
 2 INTRODUCED BY *Cowley* *Mazuch* *Jira*
 3 *Meam*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 5 NONPROFIT CORPORATE LAW; AMENDING SECTIONS 15-1-101,
 6 33-17-211, 35-6-104, AND 35-6-201, MCA; REPEALING SECTIONS
 7 35-2-102 THROUGH 35-2-112, 35-2-201 THROUGH 35-2-211,
 8 35-2-301 THROUGH 35-2-304, 35-2-401 THROUGH 35-2-413,
 9 35-2-501 THROUGH 35-2-509, 35-2-601 THROUGH 35-2-607,
 10 35-2-701 THROUGH 35-2-706, 35-2-711 THROUGH 35-2-719,
 11 35-2-801 THROUGH 35-2-819, 35-2-901 THROUGH 35-2-903,
 12 35-2-1001, 35-2-1002, 35-2-1101 THROUGH 35-2-1106, AND
 13 35-2-1201 THROUGH 35-2-1203, MCA; AND PROVIDING AN EFFECTIVE
 14 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because
 17 it grants authority to the secretary of state to establish
 18 fees and mandate the use of forms. The fees established by
 19 the secretary of state must be commensurate with the cost of
 20 the service performed. The forms adopted should be based on
 21 forms recommended by this bill.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. Section 1. Definitions. As used in

1 [sections 1 through 168], the following definitions apply:
 2 (1) "Approved by the members" means approved and
 3 ratified by the affirmative vote:
 4 (a) of a majority of the votes represented and voting:
 5 (i) at a meeting at which a quorum is present and the
 6 affirmative votes constitute a majority of the required
 7 quorum;
 8 (ii) by a written ballot or written consent in
 9 conformity with [sections 1 through 168]; or
 10 (iii) by the affirmative vote, written ballot, or
 11 written consent of the majority; and
 12 (b) that includes the votes of all the members of any
 13 class, unit, or grouping that may be required by the
 14 articles, bylaws, or [sections 1 through 168] for any
 15 specified member action.
 16 (2) "Articles of incorporation" or "articles" include
 17 amended and restated articles of incorporation and articles
 18 of merger.
 19 (3) "Board" or "board of directors" means the board of
 20 directors except that a person or group of persons are not
 21 the board of directors because of powers delegated to that
 22 person or group pursuant to [section 75].
 23 (4) "Bylaws" means the code, codes, or rules, other
 24 than the articles, adopted pursuant to [sections 1 through
 25 168] for the regulation or management of the affairs of the

CHAIRMAN--BOB BACHINI
NORMAL SCHEDULE==> SITE: ROOM 312-3

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY-JO LAHTI

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0692	2/08				APPROPRIATIONS	
GOULD, BUDD				SCHOOL OF PHARMACY ACCOUNT FROM INCREASED PHARMACY-RELATED LICENSURE FEES		
HB0698	2/08	2/21		PASS AS AMENDED		2/22
SCOTT, JOHN				REVISE TAP ROOM LAW TO INCLUDE BREWERS OF LESS THAN 60,000 BARRELS PER YEAR		
HB0703	2/08	2/22		PASS AS AMENDED		2/23
BRADLEY, DOROTHY				SCIENCE AND TECHNOLOGY INVESTMENT IN VENTURE CAPITAL COMPANIES		
HB0706	2/08				LOCAL GOVERNMENT	
COHEN, BEN				ESTABLISH LICENSING PROCESS FOR MOTOR VEHICLE WRECKING FACILITIES/GRAVEYARDS		
HB0707	2/08	2/21		NOT PASS AS AMEND		2/22
MENAHAN, RED				ALLOW TV DISTRICTS TO CONSTRUCT CABLE TELEVISION SYSTEM		
HB0719	2/08	2/22		PASS AS AMENDED		2/22
BROWN, DAVE				RESTRICT PERSONS WHO MAY CONDUCT PHYSICAL EXAM OR REVIEW CERTAIN RECORDS		
HB0725	2/08	2/15		DO PASS		2/15
SPRING, JR., WILBUR				EXTEND PERMISSIBLE TERM OF CERTAIN CONSUMER LOANS		
HB0739	2/09	2/20		DO PASS		2/20
RICE, JIM				REVISE REAL PROPERTY REDEMPTION LAWS		
HB0740	2/09	3/07		TABLED ON 03/11		
GRADY, ED				BREWERY PUB BEER LICENSE		
HB0741	2/11	2/18		PASS AS AMENDED		2/19
CROMLEY, BRENT				REVISE NONPROFIT CORPORATION LAW		
HB0742	2/11	3/08		PASS AS AMENDED		3/09
WANZENRIED, DAVID				REVISE BOAT DEALER LAWS		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN BOB BACHINI, on February 18, 1991, at 7:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Members Excused: Stella Jean Hansen (D)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HOUSE BILL 350

Motion: REP. PAVLOVICH moved HB 350 DO PASS.

Motion: REP. PAVLOVICH moved HB 350 be amended.

Discussion: REP. PAVLOVICH explained that the first amendment on line 5 is to insert "provide certain exemptions". He also proposed to change it to a civil penalty on line 6 after "provide a" penalty will be a civil penalty. On page 1, line 10, following line 9, insert a new section, section 1, definition as used in sections 1 through 4. The following definitions apply.

It basically says that the distributor shall remit to the retailer. I don't see a provision if the distributor has his own tanks than he could keep the money.

Mr. Taggart said he was not aware that that had not been provided for in the bill.

REP. BACHINI referred members to page 2, line 9. It says not withdrawn from the distributors storage tank.

REP. CROMLEY asked Steve Viscan for an approximate number of size of and number of payments.

Steve Viscan said there are 85 licensed distributors in the state of Montana. There are some people who are licensed who do not actively market fuel in Montana, but remain licensed. If I was to estimate, I would guess 70 making those payments. I, as a purchaser, make one payment for all of the fuel I purchase. If a service station was doing 500,000 gallons a year, that would be a medium size station. That would represent \$1,000 per year. It would be the number of service stations that are served directly out of towns which currently have terminals or refineries.

Closing by Sponsor:

REP. KILPATRICK said you put gasoline into a tank, 5000 gallons, and it evaporates. May 10 gallons, 15 gallons, whatever it is. The person cannot sell it. He is only selling 4,900 gallons or whatever it may be. Now the state is saying because you didn't sell it we are going to give you a break on your taxes. Who gets the break - the one who does the paperwork? No! You want the guy who loses that money and it sounds to me like the retailer is losing his money. He is the one who has lost the gallons. Why should the jobber get the money? Whether it is 50 cents or \$1,000 the man deserves his money. I believe it is a good law.

HEARING ON HOUSE BILL 741

Presentation and Opening statement by sponsor:

REP. BRENT CROMLEY, HD 94, Billings, explained the bill.

Proponents' Testimony:

Steven C. Bahl, Professor, University of Montana School of Law, Missoula, submitted written testimony. EXHIBITS 12 and 12A.

Bob Pyfer, member, Montana Bar Association, Committee on Revision of Corporate Laws, said for-profit business corporations have one basic structure that is common to all of them. Non-profit organizations have at least three different types. That is a central issue in the bill. In terms of how we deal with existing non-profit organizations and how we make the transition. The bill is effective Jan. 1, 1992.

Jock Michellotti, Partner, Crowley Law Firm, Billings, said with respect to directors, this bill provides for standards of conduct very similar to the profit act. It deals with conflicts of interest, in that it provides mutual benefit corporations with standards that are very similar to business corporations. It provides higher standards as well for public benefit and religious type of non-profit corporations. It assures that directors do not profit from the relationships and yet provides non-profit corporations with the ability to work with those institutions or companies or businesses those directors are involved in. Additionally, as far as officers are concerned, this law provides standards of conduct for officers that are very similar to those that apply to directors. What is significant about that is, as we have noted, many of you are probably members of non-profit boards. You're volunteers. In the case of those non-profit organizations, often times full-time employees are conducting significant acts and this law will provide those non-director employees to be subject to the same standards of conduct that directors are involved in. Finally indemnification is also provided for similar to what is provided in the profit act. It gives you guidance which will balance the protections that are needed, directors as well as the public they serve.

Bob Murdo, Attorney, Jackson, Murdo and Grant, Helena, said that this law would help non-profit corporations, attorneys for non-profit organizations and board members to understand clearly what the law is. It is vague right now and several situations haven't been modified since 1967. The old act required written notice of membership meetings. The new proposal in (section 62) indicates that fair or reasonable notice is all that is required for this type of meeting. If there is a problem with the existing articles of incorporation or the by-laws, the non-profit corporation is not certain how to get hold of all its members, there is no format for that to make certain the activities you plan at that meeting will be authorized. This law (in sections 18 and 60) authorizes application to a court to have that court specifically authorize either a ballot or a specific handling of the meeting.

Adam McLane, submitted written testimony. **EXHIBIT 13.**

Garth Jacobson, Attorney, Secretary of State's Office, said there will be some real problems if the for-profit bills pass and this one doesn't. We need to get both of these through at the same time. It is very important that the profit and non-profit bills go through together. The transition process will occur over a three year period. The Secretary of State's Office will during this period on its annual reports give people the option of making this designation. In the year 1995, that designation will become final. We will spend a lot of time educating non-profit corporations as to what this does and how it works. We will send out that information with the annual reports and in our business services bulletins. They will be informed and we will assist

them in any way possible to help them work through this transition process. The amendments you have before you are here because of needed technical changes. EXHIBIT 14. The first set of amendments is changing "shareholders" to "members". There are no shareholders in a non-profit corporation. The second set of amendments is for the annual reports, which are presently due April 15th, not April 1st, as the bill indicates.

Ward Shanahan, Attorney representing Carroll College, Helena, spoke in support of this legislation.

Questions from the Committee:

REP. ELLIS asked Steven Bahl to comment on Mr. McLane's written testimony.

Steven Bahl responded that Mr. McLane indicates that this is a disadvantage to small corporations because they may have to refile the articles of incorporation. That is not the case. No refiling is necessary. Yes, they may want to amend their by-laws if they want to take full advantage of this act. Non-profit corporation is not defined under existing law. We don't want the Secretary of State to get into an analysis of who is a corporation and who isn't. The IRS does that for tax purposes already and that is the primary determination that needs to be made. It is not up to the Secretary of State's office to determine if a corporation is a non-profit organization. Everyone will not incorporate as a religious corporation. A country club is not going to incorporate as a religious corporation because they could not sell memberships. There are incentives built in to incorporate into the appropriate organization. We do not define in detail what a religious organization is. We have self designation. Mr. McLane suggests Chapter 27 organizations should be incorporated. In fact, it has been incorporated in this specific bill. Chapter 27 protects officers and directors and volunteers from liability. We don't change the broad protection that, in fact, the volunteers, owners and directors have against a liability. He suggests that section 173 is too narrow. 173 is a temporary provision until corporations elect their own status. They want to elect before 1995. They can by amending their articles of incorporation. Organizations can designate that designation which they feel are most appropriate. He doesn't like a private foundation language in section 17. That is essentially identical to what the law provides for in Section 35-2-112, MCA, already. Mr. McLane suggests that a section heading is wrong. We will look at that.

Closing statements by sponsor:

REP. CROMLEY closed.

EXECUTIVE ACTION ON HOUSE BILL 741

REP. KILPATRICK moved HB 741 do pass.

Motion/Vote: REP. DOWELL moved HB 741 be amended. (EXHIBIT 14)
Motion CARRIED unanimously.

Motion/Vote: REP. DOWELL MOVED HB 741 do pass as amended. Motion
CARRIED with REP. PAVLOVICH voting no.

EXECUTIVE ACTION ON HB 626

Motion: REP. WALLIN moved HB 626 do pass.

Motion/Vote: REP. WALLIN moved HB 626 be amended. Motion
CARRIED.

Discussion on HB 626 as amended:

REP. DOWELL said that the proponents are the hospital folks and the opponents are the nurses. I have to look at the number of nurses involved compared to the number of hospitals involved. It seems like an issue of almost a labor/management thing. In not knowing whether there is a reciprocal agreement with Canada, I would have to oppose the bill.

REP. BACHINI said he had similar problems with the bill. They have an administrative ruling already to take care of this, so why should we pass legislation to do it. For the students enrolled in our nursing programs here in Montana, what will that do for them? Will it force them to leave Montana?

REP. SCOTT said one opponent to the bill said this will not help out the small community hospital. I agree with that. For instance, a registered nurse can go to Billings and just about pick his or her shift because of the shortage and I think if they go to the small hospital this would not be the case. Maybe they would start out in a small hospital and move from there as openings arise.

REP. PAVLOVICH said opposed the bill due to the fact that we have a nursing school that is very efficient and have a lot of students that want to work. It opens the door for everyone to work in a small community and then move up to the larger communities as positions open up. I think this bill draws away from the positions we have in Montana.

REP. STEPPLER said Carroll College is graduating nursing students this spring. The majority of the students graduating from Carroll will not be staying in the state of Montana. There are recruiters here from Colorado, Arizona, California, Georgia, Minnesota. All of these states are paying higher wages in the hospitals. People coming from Canada are probably not going to take jobs away from Montanans. We have enough openings in Montana to accommodate everyone.

REP. BARNETT said she opposed this bill at the present time

EXHIBIT 12
2/18/91
HB 686

TESTIMONY OF STEVEN C. BAHLS

Professor of Law
University of Montana School of Law
Missoula, MT 59812

before the
HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
on February 18, 1991
in support of
House Bill 741
(An Act Generally to Revise Montana Nonprofit Corporate Law)

I am the Chair of the State Bar of Montana Corporate Law Revision Committee. I also serve as a member of the board of two Montana nonprofit organizations: the Missoula Public Library Foundation and my local church, both of which are incorporated under the Montana Nonprofit Corporation statute.

House Bill 741 (An Act Generally To Revise Nonprofit Corporate Law) is a companion bill to House Bill 552 (An Act Generally To Revise the Montana Business Corporation Act). As the State Bar's Committee considered the business corporation law in the fall of 1989, members quickly observed that there are more similarities between business corporations and nonprofit corporations than dissimilarities. Both are incorporated in the same way, both file documents with the secretary of state, both have a governing board and officers, members or shareholders of both generally elect the governing board, both have bylaws, and both have special rules about selling substantially all their assets, merging and dissolution.

The Committee also observed that the nonprofit corporation law in Montana was even less clear and less up to date than the business corporation law. Montana's nonprofit corporation laws have not been substantially updated since 1967. I suspect that while the corporate bar has been vigilant in monitoring the business corporation laws, we have been less vigilant with respect to the nonprofit law. Professor Harry G. Henn of Cornell University Law School was correct when he observed:

Nonprofit organizations have been the neglected stepchildren of modern organization law. The law historically has given nonprofit organizations, like Cinderellas, the hand me downs of their half-siblings, the business organizations."

Henn, "Statutory Trends in the Law of Nonprofit Organization," 66 Cornell Law Review 1103, 1104 (1981).

House Bill 741 gives us the opportunity to correct that problem in Montana.

It is, indeed, increasingly important to provide the nonprofit corporation community with the same unambiguous laws provided to the for-profit corporation community. Forty-five percent of adult Americans act as volunteers for charities, averaging 4.7 hours of contributed time a week. Approximately 11.5 million people (nationally) serve on boards of nonprofit organizations. Nonprofit organizations employ 6% of the work force. Up-to-date, workable nonprofit laws for nonprofit corporations are a must.

The Corporate Law Revision Committee spent 18 months studying this problem. As with its proposed revisions in the Business Corporation Act, the Committee based its proposals largely on the Revised Model Act prepared by the American Bar Association. The Committee recommends the ABA Model Act for three reasons. First, the American Bar Association based its Model on thorough research. The American Bar Association surveyed nonprofit organizations throughout the nation to ascertain what legal problems they faced and how those problems could be solved. The American Bar Association circulated more than one thousand copies of its initial draft to nonprofit organizations and others. After eight years of studies by the nation's top nonprofit organization experts, the ABA proposals were finalized in 1987. Second the initial ABA Model Nonprofit Corporation Act provides the basis for our current Montana law. Updating the Montana law with the ABA revisions only seems appropriate. Third, the ABA has supplemented its Revised Model Act with a volume of Official Comments. These comments are extremely useful when applying the legislation.

Once the Committee decides to base its proposals on the Model Act, it engaged in a careful analysis of the Act. It did not blindly adopt the proposals, but retained important aspects of current Montana law, such as Montana's limits on liability of volunteers and directors. (Section 91 (6))

The Committee published an exposure draft of its proposals in June of 1990. It solicited and received comments from the nonprofit corporation community. Comments were favorable. The Committee's proposals were finalized and circulated in October of 1990.

The legislation is quite lengthy in that it entirely restates the law concerning corporate governance in nonprofit organizations. I wish to highlight several objectives of the Committee; other members of the Committee will speak in more detail on specific sections of the law.

The overriding objectives of the Committee were to improve the law, to clarify the law, and to eliminate unnecessary rigidity in the law.

IMPROVEMENT OF THE LAW

There are three basic types of nonprofit organizations: religious organizations, nonprofit organizations that primarily benefit their members (like a country club or trade association) and nonprofit organizations that primarily benefit the public (like the American Red Cross or a private college) (Section 16(1)). Each of these organizations should be treated differently in the eyes of the law. Religious organizations should largely be free from the scrutiny of the state (Sections 20 and 83). There should be maximum flexibility to corporate government to accommodate their religious hierarchies and beliefs. Nonprofit corporations like country clubs should be governed more like regular corporations. Members should, if permitted by law, be able to transfer their members or have the organization buy them back (Sections 43 and 49). On the other hand, the law should encourage nonprofit corporations,

like the Red Cross, that are chartered for a public purpose, to make sure that they do not operate for the private benefit of their officers and directors.

Montana statutory law currently treats the local church in the same way it treats a country club or a trade association. To fail to distinguish between these nonprofit corporations is to force a square peg into a round hole. To address this problem, courts have frequently fashioned ad hoc and haphazard rules to distinguish between these organizations. These rules are unclear and often unevenly applied. The new legislation sets forth clear rules governing each type of organizations, but generally allow some flexibility for each type of corporation to modify those rules in their charter.

CLARIFICATION OF THE LAW

This bill also clarifies Montana law, just as the Business Organization bill clarified Montana law. Clarity in the law avoids needless litigation and adds to certainty in planning.

These provisions are good examples:

- *Indemnification.* While Montana law, as it now exists, provides substantial protection to officers and directors of nonprofit corporations against liability, the law is largely silent as to when and how a nonprofit corporation may (or must) reimburse its officers and directors for liability they incur when acting for the corporation. The proposal allows nonprofit corporations substantial flexibility in establishing policies in this regard, while at the same time protecting officers and directors (Section 101 through 109).
- *Duty of Loyalty.* Courts carefully scrutinize transactions between nonprofit corporations and their officers and directors for conflicts of interest. The standards, however, are not clearly defined by the courts. As such, the Committee proposes specific conflict of interest rules that balance the need to

balance the need to preserve the public perception that nonprofit corporations are worthy of trust, while at the same time allowing those organizations to deal with directors who might also be officers of financial institutions, landlords or other businesses. Directors who act in good faith and meet the other standard of the proposal are protected (Section 92).

- *Derivative Actions.* The statute is currently silent as to the ability of a member of the corporation to sue the director derivatively (in the name of the corporation) if they stray from the nonprofit purpose or otherwise mismanage the corporation. The bill provides specific standards to limit these actions when the risk of a harassment lawsuit exceeds the public interest in allowing those suits to go forward (Sections 50 through 56).

The law also clarifies the ability of the Attorney General to supervise these nonprofit organizations. Under existing Montana law the Attorney General may sue to dissolve a corporation if it acts in an unauthorized way or it may seek to enjoin a corporation from performing unauthorized acts. The rationale is that the Attorney General represents the interest of the public in insuring that a charitable organization acts to accomplish its charitable purpose. The existing law better defines the ability of the Attorney General to petition a court to intervene in a nonprofit organization (Section 19). Two points should be noted.

(a) The bill limits the Attorney General's power to intervene in religious corporations, for fear of unnecessary interference with the free exercise of religion. (For example, see Sections 20 and 83.) Likewise, the bill limits the obligations of organizations operating primarily for their members to give the Attorney General notice of important corporate action (Sections 106, 124, 131, 136). With these organizations, members who have an economic interest are best suited to monitor the corporation's activities. The Attorney General's greatest power is to petition a court to

stop nonprofit corporations that are organized to benefit the public, from violating its charitable purpose. Examples of fraud and self dealing by charities are too common. This bill will allow the Attorney General to take steps to help stop these abuses. To do so will increase confidence in nonprofit organizations.

(b) Even when the Attorney General may intervene, his power is limited. The Attorney General cannot actually intervene in the affairs of a nonprofit corporation. As a general rule, he can only petition a court to stop actions that violate the charitable purpose (Section 19).

ELIMINATION OF NECESSARY RIGIDITY

Finally, the law allows increased flexibility. It expressly permits many management practices now used by nonprofit organizations. The proposal specifically allows self-perpetuating boards (Section 77), makes it easier to call and hold meetings (Sections 60 through 65), makes it easier to structure an organization with delegates (Section 57), allows more flexibility in methods of choosing directors (Sections 60 through 65, 77), allows directors meetings to be held by phone and generally simplifies corporate governance (Sections 85 through 90).

I should make it clear that the bill applies to nonprofit corporations incorporating only under the general nonprofit statute. It does not address those organizations incorporated under specific sections of the Montana Code that address specific types of nonprofit organizations. As such, it does not address credit unions, cooperative associations, agricultural associations, rural cooperative utilities, cemetery associations and those religious groups under the Religious Corporation Sole statute.

House Bill 741 will make it easier for directors to manage a nonprofit corporation because the law is clear, yet flexible. Adoption of House Bill 741 will provide nonprofit organizations with the same up-to-date law as for profit corporations.

EXECUTIVE SUMMARY

HOUSE BILL 741
STATE BAR OF MONTANA
CORPORATE LAW REVISION PROJECT

Steven C. Bahls, Missoula, Chair
Robert Murdo, Helena, Vice Chair
Karla Gray, Butte
Garth Jacobson, Helena
Bruce MacKenzie, Great Falls
Robert G. Michelotti, Jr., Billings
Robert Pyfer, Helena
Jeff Pence, Bozeman
Bob Goodale, Circle

House Bill 741 was drafted by the Corporate Law Revision Committee of the State Bar of Montana. This Executive Summary discusses the drafting process and the material provisions of the bill.

IMPORTANCE OF NONPROFIT CORPORATIONS

The law governing nonprofit organizations has not historically received the attention it deserves. Professor Howard Oleck observes: "American society has consisted, to an extraordinary extent, of voluntary associations of persons and organizations not for profit, but for the public good." H. OLECK, *NONPROFIT ORGANIZATIONS AND ASSOCIATIONS* (1980). Approximately 11.5 million people (nationally) serve on the boards of nonprofit organizations. C.N. WALDO, *A WORKING GUIDE FOR DIRECTORS OF NONPROFIT ORGANIZATIONS* xi (1986). Nonprofit organizations employ seven million workers (6% of the work force in the U.S.), contributing \$228.2 billion to the national economy. Reiss, *The Hidden Economy: The Nonprofit Sector*, *MANAGEMENT REVIEW* 49 (July 1989). In addition, 45 percent of all adult Americans act as volunteers for charities, averaging 4.7 hours of contributed time a week. *Id.* at 50. Up-to-date laws for nonprofit organizations, as such, are a must.

BACKGROUND OF THE PROJECT

On July 7, 1989, Gary Spaeth, President of the State Bar of Montana, appointed a special Corporate Law Revision Committee. The objective of the Committee was "to review Montana's corporation statutes and to propose to the 1991 Legislature necessary and desirable revisions aimed at providing the business community up-to-date and unambiguous laws addressing corporate governance."

The Committee, in accordance with its charge, limited its review to matters of corporate governance. Corporate governance issues are currently addressed in Chapter One of Title 35. For nonprofit corporations, corporate governance issues primarily deal with the relationship between a corporation and its members, directors and officers. In addition, corporate governance issues, to a more limited extent, deal with the relationship between a corporation and state government (particularly the secretary of state) and creditors (particularly upon the dissolution of a corporation).

As such, the Committee did not examine taxation, workers' compensation and other issues outside the scope of corporate governance.

The membership of the Committee was a broad spectrum of attorneys including those in private practice and those employed by government, a nonprofit organization, private industry and academia. Committee members had expertise in all aspects of corporate governance including closely held businesses, publicly held businesses and nonprofit organizations. The Committee members' employers have generously provided the services of the Committee members.

The Committee members have met numerous times since their appointment, reviewing the American Bar Association's Revised Model Business Corporation Act, the Revised Nonprofit Business Corporation Act and legislation from various states. The Committee took into consideration the interests of nonprofit corporation members, directors and management, as well as the interests of the State of Montana and its citizens.

HISTORY OF THE ABA MODEL ACTS

The Committee's proposals are based largely on the Revised Model Nonprofit Corporation Act (1987) ("RMNCA") prepared by the American Bar Association. The current Montana Nonprofit Corporation Act is based on earlier versions of the ABA Model Act.

The RMNCA is the first complete revision of the ABA's Nonprofit Corporation Act since 1964. The drafters of the RMNCA used, as their starting point, the California Nonprofit Corporation Act. The ABA's Subcommittee on Model Nonprofit Corporation Law, composed of leading experts in the area of nonprofit corporations, circulated over one thousand copies of their exposure draft to nonprofit organizations, the IRA, academics, accountants and others. The ABA proposals were finalized and adopted in whole or in part by several jurisdictions. Other states are considering the law. *See Hone, Aristotle and Lyndon Baines Johnson: Thirteen Ways of Looking at Blackbirds and Nonprofit Corporations -- The American Bar Association's Revised Model Nonprofit Corporation Act*, 39 CASE W.R.L. REV. 751 (1988). *See generally* Moody, *The Who, What and How of the Revised Model Nonprofit Corporation Act*, 16 N. KENT L. REV. 251 (1988).

The Revised Model Nonprofit Corporation Act is generally parallel to the Revised Model Business Corporation Act (House Bill 552).

Because the Bar recommends staying with the ABA Model Acts, existing forms of articles of incorporation now on file need not be amended. The basic principles applicable to corporations remain largely unchanged.

ADVANTAGES OF THE PROPOSED REVISIONS TO THE MONTANA NONPROFIT CORPORATION ACT

The Committee's proposals for the Montana Nonprofit Corporation Act are parallel to its proposals for the Montana Business Corporation Act, except where policy reasons indicate a different treatment. The objectives of the Committee, when revising the Montana Nonprofit Corporation Act, were (a) to clarify, (b) to modernize, and (c) to simplify the law relating to governance of these organizations.

Because of the dearth of court decisions regarding nonprofit corporations, questions that are not addressed in the statute create substantial uncertainty for nonprofit corporations and those who represent them. As such, the Committee proposals *clarify* the following issues that would otherwise be left to the courts:

a) *Increased Flexibility.* The proposal specifically allows self-perpetuating boards, simplifies filing documents with the secretary of state, makes it easier to call and hold meetings, makes it easier to structure an organization with delegates, allows more flexibility in methods of choosing directors, allows directors meetings to be held by phone and generally simplifies corporate governance.

b) *Indemnification.* While Montana law, as it now exists, provides substantial protection to officers and directors of nonprofit corporations against liability, the law is largely silent as to when and how a nonprofit corporation may (or must) reimburse its officers and directors for liability they incur when acting for the corporation. The proposal allows nonprofit corporations substantial flexibility in establishing policies in this regard, while at the same time protecting officers and directors. The substantial protection against liability the existing law affords officers and directors is preserved.

c) *Duty of Loyalty.* Courts carefully scrutinize transactions between nonprofit corporations and their officers and directors for conflicts of interest. The standards, however, are not clearly defined by the courts. As such, the Committee proposes specific conflict of interest rules that balance the need to balance the need to preserve the public perception that nonprofit corporations are worthy of trust, while at the same time allowing those organizations to deal with directors who might also be officers of financial institutions, landlords or other businesses. Directors who act in good faith and meet the other standard of the proposal are protected.

d) *Derivative Actions.* The statute is currently silent as to the ability of a member of the corporation to sue the director derivatively (in the name of the corporation) if they stray from the nonprofit purpose or otherwise mismanage the corporation. The Proposal provides specific standards to limit these actions when the risk of a harassment lawsuit exceeds the public interest in allowing those suits to go forward.

e) *Rights of Members.* The proposal clarifies the rights of members of *mutual benefit associations*, if permitted by articles of incorporation or bylaws, to transfer memberships (for consideration) and receive distributions when a corporation dissolves. Members of religious corporations and public benefit corporations do not have this privilege.

f) *Dissolution.* The abilities of creditors and injured plaintiffs to recover against the assets of a dissolved corporation is not clear under existing law. In some cases, plaintiffs may be left without a remedy. The proposal balances the rights of creditors of the dissolved corporation with the necessity for the dissolving organization to wind up its affairs.

g) *Housekeeping.* The Committee's proposals, throughout, clarify ambiguities in existing law, eliminate unnecessarily technical requirements and provide for maximum flexibility in structuring a corporation. For example, the law authorizes the use of delegates. It also clarifies the circumstances under which a membership may be purchased.

h) *Terminations of Membership.* Whether a member may be expelled or terminated is now left to the courts. The proposal contains specific provisions as to how a nonprofit corporation must use the process to expel a member without fear of liability.

In addition, the proposals adopt a growing trend in the law treating mutual benefit corporations, religious organizations and public benefit corporations differently. To fail to distinguish this is to force a square peg into a round hole. Under the proposal, each newly formed nonprofit corporation must choose between designation as a public benefit, mutual benefit or religious corporation. Existing nonprofit corporations must choose a designation before 1995. The Committee's proposal recognizes the difference between these different types of nonprofit corporations:

a) *Public Benefit Corporations* are those corporations operating for public or charitable purposes. As such, members may not sell their interest or receive distributions from the organizations. Because members of public benefit corporations have little economic interest in their corporations, they usually do not carefully monitor activities to prevent corporate abuse. The Committee's proposal addresses this problem by increasing the statutory authority of the Attorney General to monitor these organizations.

b) *Mutual Benefit Corporations* are organizations such as trade associations, social clubs, and fraternal organizations designed to benefit their members. Members, as such, are given broader voting rights. Members, while not entitled to receive distributions while the organization is operating, will be entitled to sell their memberships and receive distributions when the organization dissolves.

c) *Religious Corporations* are treated under the proposal in a way similar to public benefit corporations. For constitutional and public policy reasons, however, the proposal allows more flexibility in the governance of these organizations. Similarly, the power of the Attorney General to oversee a religious corporation is limited.

Self designation by nonprofit corporations has the advantage of eliminating the uncertainty of courts making an inappropriate designation. Courts, when deciding such issues as the property rights of members, of course, are already forced to categorize nonprofit organizations when deciding such issues as the property rights of members. H. OLECK, NONPROFIT CORPORATIONS, ORGANIZATIONS, AND ASSOCIATIONS § 266 (1980).

Finally, just as the RMBCA eliminates unnecessary complexity in the laws governing business corporations, the RMNCA eliminates unnecessary complexity in the laws governing nonprofit corporations.

EXHIBIT 13
2/18/91
HB 741

Statement on HB 741

Mr. Chairman, Members of the Committee:

My name is Adam McLane. I live in Helena at 621 3rd Street. I am testifying this morning as an individual. But for your information I am a Certified Public Accountant, I have worked for nonprofit organizations for the past twenty years, I have served on nonprofit boards, and I have been a consultant to a variety of nonprofits on management matters, including incorporating and obtaining a tax-exempt status.

I am speaking as a proponent of HB 741, but the truth is that it is difficult to know whether to support or oppose this legislation.

The bill, as you know, completely rewrites the Montana Nonprofit Corporation Act. In my opinion, it is not clear that the Act needs to be rewritten. Few persuasive arguments have been advanced by the previous proponents to establish that there is a need to change the existing version of the Act. I believe that the existing law has, in fact, worked reasonably well, and is relatively easy to understand.

A definite argument against any change relates to the length and complexity of this bill. Besides the burden that is placed on this Committee and the Legislature by a bill of this length, it also means added work for all the nonprofit corporations it applies to (which must number at least a thousand). If this bill is enacted into law, at a minimum each existing nonprofit will need to obtain a copy of the new law, and read it carefully in its entirety (no small matter). In addition, if this bill passes, in my opinion many of these nonprofits will conclude they must amend both their articles of incorporation and their by-laws. I believe this will be necessary because a number of the provisions of this bill set specific standards for such things as meetings and voting, and other procedural requirements, that will not correspond to the current practices of existing organizations. It is not that either this bill, or the organizations' current practices, are better; they are simply different. The additional work and expense involved will not help any of these nonprofit organizations further their exempt purposes; it will just be "busy" work -- which none of them need.

If, however, this Committee believes that a rewritten Montana Nonprofit Corporation Act is needed at this time, I have a number of changes to suggest in HB 741 as drafted.

1. In contrast to the current Nonprofit Corporation Act, nowhere in this new version is the word "nonprofit," or the pair of words "nonprofit corporation," defined. I believe this is a serious omission because it leaves undefined the type of corporation to which the Act applies. It theoretically allows a for-profit corporation to incorporate under this Act.

end of document

EXHIBIT 14

HB 741

2/18/91

Amendments to House Bill No. 741
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 18, 1991

1. Page 8, line 1.
Strike: "shareholder's"
Insert: "member's"
2. Page 8, line 2.
Strike: "shareholders"
Insert: "members"
3. Page 162, lines 12 and 17.
Following: "April"
Strike: "1"
Insert: "15"

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE Feb. 18, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 741 (first reading copy -- white) do pass as amended .

Signed: Bob Bachini
Bob Bachini, Chairman

And, that such amendments read:

1. Page 8, line 1.

Strike: "shareholder's"

Insert: "member's"

2. Page 8, line 2.

Strike: "shareholders"

Insert: "members"

3. Page 162, lines 12 and 17.

Following: "April"

Strike: "1"

Insert: "15"

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Business & Econ Dev. COMMITTEE BILL NO. HB 741
 DATE Feb. 18, 1991 SPONSOR(S) Rep. B. Cromley
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Grant Jacobson	Sec. of State	✓	
Roger Tippy	self	✓	
Bob Murdo	State Bar Corporation Committee	✓	
Jock Michelotti - Blys	✓ ✓	✓	
Steven C Bahl's	State Bar Corporation Committee	✓	
Adam McLane	self	✓	
Bob Pyper	State Bar Corporation Revision Comm.	✓	
Bill Leary	MISAE - Self -	✓	
WARD STANARD	self	✓	

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY-JOANN BIRD

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0631	2/27	3/22		CONCUR AS AMENDED		3/23
MCCULLOCH, SCOTT			MINIMUM SENTENCE RESTRICTIONS FOR SEXUAL OFFENSES INVOLVING PERSON UNDER 16			
HB0653	2/26	3/14		TABLED ON 03/16		
WHALEN, TIM			REVISE LEGISLATIVE, JUDICIAL, AND PROSECUTORIAL IMMUNITY			
HB0668	2/27	3/25		CONCUR	JUDICIARY	3/25
DARKO, PAULA			REVOCATION OF LICENSE MANDATORY FOR PERSONS UNDER 18 CONVICTED OF POSSESSION			
HB0668	3/25	3/25		CONCUR AS AMENDED		4/01
DARKO, PAULA			REVOCATION OF LICENSE MANDATORY FOR PERSONS UNDER 18 CONVICTED OF POSSESSION			
HB0675	2/26	3/13		CONCUR		3/13
SQUIRES, CAROLYN			ALLOW TRO TO ISSUE UPON THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY			
HB0691	2/26	3/14		CONCUR AS AMENDED		3/16
TOOLE, HOWARD			REMOVE GOVERNMENT IMMUNITY FOR ENVIRONMENTAL DAMAGE			
HB0697	2/25	3/19		CONCUR		3/19
MCCAFFREE, ED			ALLOW JP & JUDGES OF COURTS OF LIMITED JURISDICTION TO SUMMON JURORS BY MAIL			
HB0735	3/07	3/12		TABLED ON 04/01		
MEASURE, BRUCE			REQUIRE INSURER TO REIMBURSE SPECIFIC CLAIMANTS FOR CERTAIN DAMAGES			
HB0741	2/25	3/18		CONCUR		3/18
CROMLEY, BRENT			REVISE NONPROFIT CORPORATION LAW			
HB0747	2/26	3/22		CONCUR AS AMENDED		4/01
LEE, THOMAS			PROVIDE ALTERNATIVES TO SENTENCING OFFENDERS TO THE STATE PRISON			
HB0752	3/21	4/16		CONCUR AS AMENDED		4/16
TOOLE, HOWARD			ESTABLISH A PROCEDURE FOR SUMMARY MARRIAGE DISSOLUTION PROCEDURE ESTABLISHED			

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 18, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: John Harp (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: The hearings of HB 552 and HB 741 were combined.

HEARING ON HOUSE BILL 191

Presentation and Opening Statement by Sponsor:

Representative Bruce Measure, District 6, said the bill is an act adopting the uniform conflict of laws which provided for a method of determining the applicable statute of limitations when other state laws are involved in a civil proceeding in Montana; and amending Section 27-2-104, MCA. He said Senator Mazurek would carry HB 191.

Representative Measure said he believed HB 191 was quite straight forward, and asked that the Committee review it. He stated that he didn't believe there were any proponents or opponents of HB 191.

Jacobson thanked the Committee, and recommended that HB 552 be concurred in.

Robert C. Pyfer, attorney, and member of the Corporate Law Revision Committee, State Bar of Montana, said that Committee went through a very deliberate, open process, and that HB 552 is a good product. He thanked the Committee, and urged their consideration of HB 552.

Allen Chronister, State Bar of Montana, said the State Bar was responsible for the initiation of this work. He thanked the Committee, and urged them to concur on HB 552.

Opponents' Testimony:

There were no opponents of HB 552.

HEARING ON HOUSE BILL 741

Representative Cromley advised that the HB 552 and HB 741 are very closely related with the same thought process and committee work involved.

Professor Steven C. Bahls, University of Montana School of Law, asked the Committee to support HB 741.

Robert C. Pyfer, attorney, and member of the Corporate Law Revision Committee, State Bar of Montana, alluded to the three kinds of non-profit organizations which are the issue of this legislation. He stated that for-profit business corporations, still have the same basis, and are owned and controlled by their investors for the purpose of returning a profit to those investors. Mr. Pyfer went on to state that non-profit organizations don't always have the exact common thread, as some are charitable organizations, or serve a public cause or good. He said these organization are not only tax exempt, but contributions to them are deductible on individual tax returns.

Mr. Pyfer told the Committee that religious corporations are very much like charitable organizations, except that they have separate constitutional status, because of the separation of church and state and the free exercise of religion clauses in our Constitution. He said the third is the mutual benefit organization which serves a limited membership, and is run by volunteers, as well as tax exempt. He explained that contributions to mutual benefit organizations are not deductible, and they may have equity memberships which can be transferred for consideration. Mr. Pyfer said they are also entitled to distribution on dissolutions.

Mr. Pyfer explained that there are some market differences from different types of organizations. Mr. Pyfer commented that it's absolutely impossible to have clarity in the law, and not

treat these organizations differently, in certain respects, in the statute, and that is a big part of what HB 741 is about. He stated that existing organizations which have already incorporated under current non-profit law must hold an election to designate themselves as either a charitable, mutual benefit, or religious organization, and that they must specify their designation on their 1995 Annual Report to the Secretary of State's office.

Mr. Pyfer told the Committee that newly organized non-profits would have to specify their classification in their Charter and Articles of Incorporation. He stated that existing non-profit corporations don't have to wait until 1995, and may elect to benefits of the proposed law, by filing that election with the Secretary of State's office by January 1, 1992. Mr. Pyfer thanked the Committee, and urged them to favorably consider HB 741.

Jock (Bob) Michelotti, State Bar Association, said many of the same provisions pertain: specifically electronic meetings by telephone, use of committees, and procedures for resignation and removal of directors. He stated that officers, who are not directors, are required, under this Act, to comply with the same standards of conduct as the directors. He further stated that many non-director officers in non-profit organizations have significant responsibilities, and that since many of them are also volunteers, it is very important that those non-director officers be subject to the same rule. Mr. Michelotti said he believes HB 741 is clear, concise, up-to-date, and he urged the Committee to pass HB 741.

Garth Jacobson, Office of the Secretary of State, said he would not repeat his testimony from HB 552. He did state that it would generally apply to HB 741 as far as simplifying procedures, and making it an easier process to deal with the Secretary of State's office.

Mr. Jacobson also addressed the question of designation of non-profit status. He said the ideal process would provide there cycles in which these organizations could make their election, beginning with the 1992 Annual Reports. Mr. Jacobson stated that the organizations will not be committed until 1995, and that the Secretary of State would provide proper education for this process.

Mr. Jacobson asked to incorporate into the hearing minutes the report of the Corporate Law Revision Committee (Exhibit #2), as it will be incorporated, by reference, into the annotations by the Code Commissioner. Mr. Jacobson thanked the committee, and urged that HB 741 be concurred in.

Allen Chronister, State Bar of Montana, stated his support of the bill, asked the Committee to give it favorable consideration.

Opponents' Testimony:

There were no opponents of HB 741.

Questions from Committee Members on House Bills 552 and 741:

Chairman Pinsoneault commented that there is real potential for fraud, and said he was involved in a situation where a member of a particular congregation, whom he knew, had the standing to go ask for an accounting from a pastor. He said there was great reluctance to make this matter public. Mr. Michelotti asked Professor Bahls to follow up. Professor Bahls stated that he came from a church in Wisconsin where there was a similar problem, and said there are real competing considerations in dealing with religious corporations.

Professor Bahls explained that the state grants them a charter as a non-profit corporation, and expects them to follow the rules (not to use personal phones to benefit employees, or a board of directors, or a governing body). He said they also have the constitutional consideration of avoiding excessive entanglement. He further stated that the problem could be addressed by clarifying the rights of the members, and giving them the authority to seek the assistance of the Attorney General with respect to fraud. He explained that the Attorney General must go into court, in such an instance, but cannot get involved in an intra-church dispute which is a policy disagreement.

Senator Pinsoneault commented that the bill makes it easier for corporations to bring family members in to become shareholders, asked if the sponsors might be creating a nepotism problem that could come back to haunt them. Professor Bahls replied he didn't think so, and said this issue has been debated in American corporate law over a period of time.

Professor Bahls further explained that if the shareholders and board of directors decide, in fact, to concur that to the power, shareholders conferring it on to the board, and the board deciding that it is in the best interest of the corporation to allow family members to enter without a financial contribution, it would be permitted. He commented that if the board of directors is giving away stock for services that will never be rendered, they may have some liability there.

Senator Halligan asked Professor Bahls to touch on Subchapter S corporations and all the general business corporations. Professor Bahls responded that the flexibility that corporations currently have with respect to making an S corporation exemption is unchanged.

Senator Halligan asked if the direction would lead to forms available to use from the Secretary of State's office. Professor Bahls said an attorney is still advisable for incorporation, but it is possible to incorporate without one. He advised the Committee that the American Bar Association, has model forms which non-attorneys can use to incorporate, but there is some risk that the appropriate modifications will not be made. He said incorporation on the non-profit side, makes it much more advisable to get an

attorney because of the tax considerations, but, again, it is impossible to incorporate without an attorney.

Closing by Sponsor:

Representative Cromley told the Committee that he felt it was difficult to consider two large bills, and to try to have a full understanding of them. He reminded the Committee of the amount of study that has gone into them, and thanked them for their consideration. He asked that Senator Mazurek carry the bills.

HEARING ON HOUSE BILL 272

Presentation and Opening Statement by Sponsor:

Representative Bradley, District 79, said HB 272 creates the Montana Community Corrections Act, authorizing local governments and private agencies to establish and operate community corrections facilities and programs, and providing for creation of community corrections boards. She stated that the bill allows sentencing courts to sentence non-violent felony offenders to a community corrections facility or program, and grants the Department of Institutions authority to adopt rules governing operation of community corrections facilities and programs. Representative Bradley further stated that the bill establishes penalties for offenders who escape from community corrections facilities, and authorizes placement of offenders in a community corrections facility or program as a condition of the deferred imposition or suspended execution of sentences.

Representative Bradley said the bill was endorsed by the Criminal Justice Corrections Advisory Council, and that she tried to pass a similar bill four years ago. She stated that the Legislature can't build itself out of the prison population crisis, and said the bill provides for correction services at the local level for both governmental or non-governmental agencies. She told the Committee that no violent crimes or sexual offenders could apply, and that local boards must be established to organize and overview the system. She stated the boards would include judges, county attorneys, and mental health, probation and parole professionals, and that the agencies would apply to the boards for approval.

Representative Bradley further advised the Committee that the second concept would allow judges to order placement of non-violent offenders into community corrections, but not for longer than one year. She said the Department of Institutions has rulemaking authority, and will evaluate the different proposals, as well as make reimbursement.

Representative Bradley said the fourth concept deals with defendants who actually contract with the agency, and work off specific obligations during their term, such as paying for part of

Closing by Sponsor:

Representative Bradley requested that Senator Doherty carry HB 303, and that Senator Pinsoneault carry HB 272., and made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 741

Motion:

Senator Mazurek will carry the bill. Senator Crippen made a motion that HB 741 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Vote:s

There were no amendments.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 552

Motion:

Senator Crippen made a motion that HB 552 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 471

Motion:

Senator Halligan made a motion that HB 471 BE CONCURRED IN.

Discussion:

Ch. 111 10am
18 March
HB 471

MEMORANDUM

TO: Dick Pinsoneault, Chairman
Senate Judiciary Committee

FROM: Bruce MacKenzie

DATE: March 18, 1991

RE: House Bill 471 - Testimony of Bruce MacKenzie

House Bill 471 provides two amendments to the existing Trust Code of Montana (the "Code"). The first amendment expands the definition of "trusts" and makes the Code applicable to trust indentures created for the purposes of issuing industrial development, health facility, mining impact, renewable resource or conservation program bonds pursuant to Title 90, M.C.A. Bonds issued under these sections of the law require a trust indenture pursuant to which a trustee acts on behalf of all bondholders in enforcing the terms of the bonds and security agreements. There are times during the life of the bonds, either due to a default or as a result of change in circumstances, that modifications to the trust indenture or other security documents are necessary. Often, these modifications may not be permitted under the terms of the documents and the trustee would be exposed to breach of fiduciary duty if it consents to the modifications without the consent of all bondholders. Such consents are practically impossible. The trustee is then left with the Hobson's choice of going forward with the modification and being exposed to liability or refusing the modification and having the transaction fail completely.

By amending the definition of "trusts" to bring these trust indentures under the coverage of the Code, a trustee would then be allowed to seek judicial supervision of any modification. Judicial supervision would provide protection to the Trustee for going forward with a modification not presently permitted under the documents. [See provisions of Montana Code Annotated Section 72-33-413 (modification or termination) and 72-35-301 (proceedings concerning trusts)].

The second amendment deals with the increasing use of revocable trusts and the increased practice of designating a trust name and the document conveying ownership of property to the trust. Title companies have advised counsel that laymen who are making conveyances on their own, as well as some lawyers, are conveying property to a trust name rather than the name of a trustee. The amendment appearing in Section 2 cures this problem by stating that the designation of the name of the trust vests the estate in the name of the trustee of that trust.

EX. 1 10
3-18-91
HB 471

Senate Judiciary Committee

-2-

March 18, 1991

Both amendments have the approval of the Montana Bar Association Trust Law Revision Committee.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me.

BAM:dk-g

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 3-8-91
10:00am

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	/		
Sen. Yellowtail	/		
Sen. Brown	/		
Sen. Crippen	/		
Sen. Doherty	/		
Sen. Grosfield	/		
Sen. Halligan	/		
Sen. Harp			
Sen. Mazurek	/		
Sen. Rye	/		
Sen. Svrcek	/		
Sen. Towe	/		

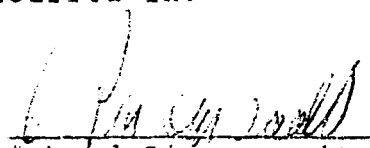
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 741 (third reading copy -- blue), respectfully report that House Bill No. 741 be concurred in.

Signed: 
Richard Pinsoneault, Chairman

19: 3-14-91
And. Coord.

JP 3/18 17:30
Sec. of Senate